

No. 12,155

IN THE

United States Court of Appeals
For the Ninth Circuit

FILIPINO FEDERATION OF AMERICA,
INCORPORATED, a foreign corporation
doing business in the Territory of
Hawaii,

Appellant,

VS.

STANLEY NICHOLSON, a minor by Ed-
ward J. Nicholson, next friend and
guardian ad litem,

Appellee.

On Appeal from the Supreme Court of the
Territory of Hawaii.

BRIEF FOR APPELLEE.

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ARGUMENT.

THAT THIS HONORABLE APPELLATE COURT WILL NOT OVER-
RULE AND REVERSE THE DECISION OF THE SUPREME
COURT OF THE TERRITORY OF HAWAII IN REGARDS TO
THE MEANING OF SECTION 9557 OF THE REVISED LAWS
OF HAWAII, 1945, UNLESS THERE BE MANIFEST ERROR,
AND THAT THERE WAS NO MANIFEST ERROR THEREIN.

Appellant advances no argument in its Assignment
of Error VI. (Brief of Appellant, p. 25.) Said As-
signment of Error is therefore waived.

“Thereby 17 alleged errors were assigned. As required by Rule 20 of our general rules, appellant has filed with the clerk of this Court 20 copies of a brief. Therein only three alleged errors are argued. Errors assigned, but not argued, are deemed waived.” *Stetson v. United States et al.* (CCA, 9th Circuit, 1946), 155 F. (2d) 359, 361.

It is submitted that this Honorable Appellate Court will not overrule and reverse the decision of the Supreme Court of the Territory of Hawaii in regards to the meaning of Section 9557 of the Revised Laws of Hawaii, 1945, unless there be manifest error.

“The first question thus presented involves the construction of local tax laws, and *the rule is well settled that an appellate court will not disturb the construction placed on such laws by the Supreme Court of a territory, except for manifest error.*” *Honolulu Rapid Transit Co., Limited, v. Wilder* (CCA, 9th Circuit, 1929), 36 F. (2d) 159, 160. (Italics ours.)

“This construction of the territorial statute by the Supreme Court of the territory should be accepted by us, unless manifestly erroneous.” *Lord v. Territory of Hawaii*, (CCA, 9th Circuit, 1935) 79 F. (2d) 761, 764.

“It is clear that these specifications present questions of local laws only. *Our power to reverse rulings of the territorial court on law or fact is limited to cases of manifest error.*” *Pioneer Mill Co., Limited v. Victoria Ward, Limited, et al.*, (CCA 9th Circuit, 1946; Rehearing denied December 11, 1946) 158 F (2d) 122, 125. Writ of Certiorari denied March 17, 1947, in 67 S. Ct. 979. (Italics ours.)

And it is submitted that there was no manifest error in the decision of the Supreme Court of the Territory of Hawaii, in the cause herein, in regards to the meaning of Section 9557 of the Revised Laws of Hawaii, 1945.

The Supreme Court of the Territory of Hawaii, in the cause herein, decided that Section 9557 of the Revised Laws of Hawaii, required, as a condition precedent of the issuance of a writ of error, the filing "with the clerk, a bond in favor of the prevailing party conditioned for the payment of the judgment in the original cause in case of failure to sustain the writ of error." (Transcript of Record, p. 13.)

In so deciding, the Supreme Court of the Territory of Hawaii was following a line of decisions it previously had rendered.

"It is conceded, as indeed it must be, that the judgment for costs is a money judgment and that under section 2529, R. L. 1925, it was necessary to the issuance of the writ to file a bond securing such costs * * *.

"* * * *The filing of a bond is by section 2529 made a prerequisite to the issuance of a writ of error and is therefore indispensable to the jurisdiction of this court.*" *Edward Kuapuhi and Keakaku (W) v. Catherine K. Pa and McBryde Sugar Company, Limited*, (1930) 31 Hawaii 623, 624. (Italics ours; Section 2529 is substantially Section 9557 of the Revised Laws of Hawaii, 1945.)

Similarly, *W. Au Hoy v. Ching Mun Shee, et al.* (1934), 33 Hawaii 239, 241; *Maria Espinda*

Akana v. William K. Espinda, (1935) 33 Hawaii 314, 315.

“The right to appeal is purely statutory. The provisions of Section 3556 are clearly mandatory and are free of any ambiguity. *That section explicitly requires as a prerequisite to the issuance of a writ of error the filing with the clerk of a bond upon specific terms and conditions.*” *A. Lester Marks v. Waiahole Water Company, Limited* (1942), 36 Hawaii 188, 190. (Italics ours; Section 3556 is substantially Section 9557 of the Revised Laws of Hawaii, 1945.)

“To reverse this judgment defendant sued out a writ of error in this court but did not file with the clerk a bond, ‘conditioned for the payment of the judgment in the original cause in case of failure to sustain the writ of error.’ R.L.H. 1945, Section 9557.

“For the failure of the defendant-plaintiff in error to file such a bond, the plaintiff-defendant in error has moved that the writ of error be dismissed * * *

“The writ of error is * * * dismissed.” *Susan Laffoon v. Lamont Alonzo Laffoon*, (1945) 37 Hawaii 107, 108, 109. (Significantly, counsel for the movant, the plaintiff-defendant in error, therein was A. Trask, the counsel for the appellant herein.)

Nevertheless, the appellant, in effect and in essence, argues that the Supreme Court of the Territory of Hawaii, in the cause herein, erred in its decision in regards to the meaning of Section 9557 of the Revised Laws of Hawaii, 1945, in that it failed to re-

sort to certain rules of statutory construction in arriving at said decision. (Brief of Appellant, pp. 6-29.)

But, where the language of the statute is clear and unambiguous, resort to the rules of statutory construction is dispensed with in determining its meaning.

“A statute is not open to construction as a matter of course. It is open to construction only where the language used in the statute requires interpretation, that is, where the statute is ambiguous, or will bear two or more constructions, or is of such doubtful or obscure meaning. *Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation*, and the court has no right to look for or impose another meaning.” 50 *American Jurisprudence, Statutes*, Section 225, pp. 204, 205. (Italics ours.)

“It is argued that this court, under the guise of the rules of statutory construction, should rewrite section 2529 so that it will authorize the doing of a thing which the statute in its present form expressly prohibits and thus have this court invade what the law has set apart as an exclusive field of legislation. In construing a statute the object is always to ascertain and give effect to the intention of the legislaturê. Where a statute is dubious courts will resort to a consideration of the reason and spirit of it or the cause which induced its enactment. As this court clearly pointed out in its opinion in *Honolulu R. T. Co. v. Wilder*, 30 Haw. 685 at 690 (quoting from 36 Cyc. 1106):

‘This intention’ (legislative purpose), ‘however, must be the intention as expressed in the statute, and where the meaning of the language used is plain, it must be given effect by the courts, or they would be assuming legislative authority.’ The above opinion was affirmed by the circuit court of appeals, ninth circuit. See 36 Fed. (2d) 159. Another eminent authority stating the same rule in different language says: ‘The statute itself furnishes the best means of its own exposition; and if the intent of the act can be clearly ascertained from a reading of its provisions, and all its parts may be brought into harmony therewith, that intent will prevail without resorting to other aids for construction.’ 2 Lewis Sutherland, Stat. Const., 2d., 665.” *W. Au Hoy v. Ching Mun Shee*, supra, pp. 241, 242.

It is readily apparent that Section 9557 of the Revised Laws of Hawaii, 1945, is clear and unambiguous.

“No writ of error shall issue until the sum provided by section 9746 has been deposited to cover costs, and, except in criminal cases and cases in which there is no money judgment, a bond has been filed with the clerk, in favor of the prevailing party in the proceeding in which the error is alleged to have occurred, or his personal representatives, conditioned for the payment of the judgment in the original cause in case of failure to sustain the writ of error.” *Section 9557 of the Revised Laws of Hawaii, 1945.*

It was apparent to the Supreme Court of the Territory of Hawaii.

“*Section 2529, R. L. 1925, is entirely free from any ambiguity whatsoever. Its terms are clear*

and unmistakable. It is susceptible of no judicial construction because there can be no doubt of its meaning. It contains no harsh, unjust or unusual provisions and the reasons which induced its enactment are obvious. It clearly was the intention of the legislature to prohibit the issuance of a writ of error by the clerk of this court until the plaintiff in error had deposited the sum of twenty-five dollars to cover costs which was to insure the payment of court costs and the filing of a bond with the clerk in favor of the prevailing party which of course was for the protection of the latter. There is nothing absurd, mischievous or unreasonable in these requirements and compliance therewith is a simple matter." *W. Au Hoy v. Ching Mun Shee, et al.*, supra, p. 242. (Italics ours; Section 2529, R. L. 1925 is substantially section 9557 of the Revised Laws of Hawaii, 1945.)

"The provisions of Section 3556 are clearly mandatory and are free of any ambiguity." *A. Lester Marks, et al. v. Waiahole Water Company, Limited*, supra, p. 190. (Italics ours; Section 3556 is substantially Section 9557 of the Revised Laws of Hawaii, 1945.)

And it seems to have been apparent to the Appellant.

"Now what is the effect of Section 9557, Revised Laws of Hawaii, 1945? A close examination of that section will show that it apparently makes necessary a filing of a bond in favor of the prevailing party before a writ of error is to be issued." (Brief of Appellant, p. 20.)

In Assignment of Error V, Appellant seeks to make Section 9557 of the Revised Laws of Hawaii, 1945, ambiguous by the consideration of certain prior statutes of the Territory of Hawaii. (Brief of Appellant, pp. 18-21.)

It is submitted that

“A study of the law as it was prior to the enactment of the statute to be construed is only profitable insofar as it may aid in the interpretation of the act, and the rule of construction of statutes in *pari materia* does not permit the use of a previous statute to control the plain language of a subsequent statute. Where a statute is clear on its face, and, when standing alone, is fairly susceptible of but one construction, the courts will adopt that construction and refuse to consider prior statutes on the same subject. Prior acts may be resorted to solve but not to create an ambiguity.” *50 American Jurisprudence, Statutes*, Section 355, p. 357.

CONCLUSION.

Upon the foregoing, the Appellee hereby respectfully urges the Honorable Appellate Court to dismiss the appeal herein from the Supreme Court of the Territory of Hawaii.

Furthermore, the Appellee hereby respectfully urges the Honorable Appellate Court to invoke its Rule 26 (2) and award to the Appellee as against the Appellant, damages at a rate not exceeding ten per cent of the judgment entered by the Circuit Court

of the First Judicial Circuit, Territory of Hawaii, (Transcript of Record, p. 2) in that it appears that this appeal herein was sued out merely to delay proceedings on said judgment.

Dated, Honolulu, T. H.

June 3, 1949.

Respectfully submitted,

SHIRO KASHIWA,

Attorney for Appellee.

